# UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD Washington, D.C.

## MARQUEZ BROTHERS ENTERPRISES, INC.

and

Case 21-CA-39581

ALFONSO MARES, an Individual

and

Case 21-CA-39609

JAVIER AVILA, an Individual

COUNSEL FOR THE ACTING GENERAL COUNSEL'S LIMITED CROSS-EXCEPTION TO THE ADMINISTRATIVE LAW JUDGE'S DECISION AND ARGUMENT IN SUPPPORT OF LIMITED CROSS-EXCEPTION

Stephanie Cahn Counsel for the Acting General Counsel National Labor Relations Board, Region 21 888 S. Figueroa Street, Ninth Floor Los Angeles, CA 90017

Tel:

(213) 894-7859

Fax:

(213) 894-2778

E-mail: Stephanie.Cahn@nlrb.gov

### INTRODUCTION

On June 22, 2011, Administrative Law Judge (ALJ) William G. Kocol issued his Decision and recommended Order in this matter. Pursuant to the Board's Rules and Regulations, Series 8 as amended, Section 102.46, Counsel for the Acting General Counsel of the National Labor Relations Board hereby files the following limited cross-exception to the Administrative Law Judge's Decision and Order<sup>1</sup>:

### **Limited Cross-Exception:**

1. To the ALJ's failure to order Respondent to perform a notice reading in English and Spanish in both the Remedy section (ALJD 21:39-53; 22:1-8) and in the Order (ALJD 22:11-45: 23:1-25).

#### ARGUMENT

In the Consolidated Complaint (General Counsel's Exhibit GC 1(j)-pages 4-5), the Acting General Counsel sought the following, "...seeks an Order requiring that a responsible management official of Respondent read the Notice to Employees in English and Spanish to assembled employees."<sup>2</sup>

In the Remedy section of Administrative Law Judge Kocol's Decision, he failed to specifically address the request for a notice reading, and he failed to order a notice reading.

A notice reading remedy is appropriate where the violations are sufficiently serious and widespread that reading of the notice is considered necessary to enable employees to exercise their Section 7 rights free of coercion. *HTH* Corporation, 356 NLRB No. 182, slip op. at 8, 10, (June 14, 2011); Homer *D. Bronson Co.*, 349 NLRB

<sup>&</sup>lt;sup>1</sup> All citations to the Administrative Law Judge's Decision will be referred to as "ALJD" followed by the page number, and then the line number(s).

<sup>&</sup>lt;sup>2</sup> The Acting General Counsel further made an argument for a notice reading in the Brief of Counsel for the Acting General Counsel to the ALJ.

512, 515-516 (2007), enfd. Mem 273 Fed. Appx 32 (2d Cir. 2008). By imposing such a remedy, the Board can assure that all employees will know that the employer will respect their statutory rights.<sup>3</sup> Here, Respondent's reaction to the union organizing on both occasions was swift and devastating. Respondent immediately terminated Mares, which essentially killed the union organizing at that time. Once the employees resurrected the dormant union campaign, Respondent again responded swiftly. It interrogated and threatened Avila regarding his union activities. Immediately after the petition was filed, Respondent placed its supervisors at a table in the warehouse where it successfully coerced employees to withdraw their union authorization cards. This solicitation corrupted the election process and not surprisingly, Local 63 narrowly lost the election. The serious and widespread nature of these violations is sufficient to warrant a remedy of notice reading in ENGLISH and SPANISH to let the remaining employees know that they are free to exercise their Section 7 rights.

<sup>&</sup>lt;sup>3</sup> Federal Logistics, 340 NLRB 255, 258 & n.11(2005), enfd. 400 F.3d 920 (D.C. Cir. 2005).

Accordingly, it is respectfully submitted that an appropriate remedy, in addition to those already prescribed by Judge Kocol in his recommended Order issued on June 22, 2011, is the following:

- A. That Marquez Brothers Enterprises, Inc., its officers, agents, successors, and assign, shall
- 1. Take the following affirmative action designed to effectuate the policies of the Act.
- (a) Within 14 days after service by the Region, hold a meeting or meetings, scheduled to ensure the widest possible attendance, at which the notice is to be read to the employees by a responsible management official or, at the Respondent's option, by a Board agent in the presence of a responsible management official, with translation available for Spanish-speaking employees.

Respectfully submitted,

Stephanie Cahn

Counsel for the Acting General Counsel

NLRB, Region 21

Dated at Los Angeles, California, this 8th day of September, 2011.

### STATEMENT OF SERVICE

I hereby certify that a copy of Counsel for the Acting General Counsel's Limited Cross-Exception to the Administrative Law Judge's Decision and Argument in Support of Limited Cross-Exception in Cases 21-CA-39581 and 21-CA-39609 was submitted by Efiling to the National Labor Relations Board on September 8, 2011. The following party was served with a copy of the same document by electronic mail:

David S. Allen Jackson Lewis LLP allend@jacksonlewis.com

Javier Avila Javieravila 18@yahoo.com

The following party was served with a copy of for the Acting General Counsel's Limited Cross-Exception in Cases 21-CA-39581 and 21-CA-39609 via overnight mail on September 8, 2011:

Alfonso Mares 7647 March Avenue Rosemead, CA 91770

Dated at Los Angeles, California, this 8<sup>th</sup> day of September, 2011.

Stephanie Cahn

Counsel for Acting for the General Counsel National Labor Relations Board, Region 21 888 South Figueroa Street, Ninth Floor Los Angeles, CA 90017-5449